Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	
Review of the Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers	CC Docket No. 01-338
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	CC Docket No. 96-98
Deployment of Wireline Services Offering Advanced Telecommunications Capability	CC Docket No. 98-147

PETITION FOR CLARIFICATION AND PARTIAL RECONSIDERATION

SureWest Communications ("SureWest"), by its attorneys, seeks partial reconsideration and/or clarification of the Commission's Triennial Review Order ("*TRO*").[1]

Summary and Introduction

SureWest is a facilities-based provider of telecommunications services, located in Northern California. Through its subsidiary companies, SureWest provides incumbent local exchange, competitive local exchange, directory advertising, long distance, cable television, broadband and PCS services. SureWest's subsidiary Roseville Telephone Company ("RTC") is an incumbent local exchange carrier (ILEC) serving subscribers in

[1] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand, 18 FCC Rcd. 16978 (Aug. 21, 2003).

south Placer and northern Sacramento counties. RTC currently serves approximately 137,000 access lines.

SureWest has the largest fiber-to-the-home ("FTTH") deployment in the U.S. with approximately 8,000 homes wired with fiber in its service area. SureWest's customers represent over 20 percent of the total FTTH market in the nation, according to figures released by market research firm Render Vanderslice & Associates. SureWest sees the future as one of increasing importance for broadband services, but it has great concern that the Commission's policies do not properly promote investment in broadband facilities.

SureWest thus urges the Commission to make the following modifications or clarifications to the *TRO*: (1) eliminate the ambiguities that would pose barriers to deployment of fiber to multiunit premises; (2) clarify that mass market fiber-to-the-premises includes customer locations with up to 48 numbers; and (3) clarify that network upgrades and installation of broadband capability would not constitute a disruption or degradation of TDM capability. The modifications suggested herein will remove those roadblocks, clarify these issues and serve the public interest and Congress' directive in Section 706 of the Telecommunications Act of 1996 to facilitate the availability of advanced telecommunications capabilities to all Americans.

1. The Rules Should Be Clarified To Eliminate Barriers to Deployment of Fiber to Multiunit Premises.

Two aspects of the rules that apply to multiunit premises, in combination, will create substantial uncertainty and will act as a deterrent to the deployment of fiber-to-the-premises. The two concerns call into question first whether the protections for fiber-to-the-premises apply to fiber loops serving multiunit premises and, second, to what extent.

A. First, the rules are ambiguous as to whether the fiber loop facilities deployed from a central office to a multiunit premise are entitled to the unbundling relief that applies for fiber-to-the-premises. Given that the current rules appear to contemplate relief for all mass market customers, the logical answer is that the Commission intended to provide such relief to customers in multiunit premises as well. However, a footnote in the Order suggests that multiunit premises customers are to be treated like enterprise customers, even when they are not.[2] As we address below, there is no reason that greater unbundling obligations should apply when fiber-to-the-premises loops are deployed to enterprise customers than to other customers. Regardless, there is no reason why these rules should apply differently when the customer is located in a multiunit premise. If the Order is not clear that multiunit premises are subject to the same rules as individual occupancy buildings, the Commission risks undermining the incentives needed to deploy new broadband services.

Multiunit premises are dispersed geographically and new community developments increasingly include a mix of single family homes, stand alone businesses, and multiunit premises containing a mix of residential and business. LECs cannot efficiently deploy fiber to these communities if they must pick and choose locations based on arbitrary regulatory classifications. A substantial number of customers, both residential and business, are located in multiunit premises. It makes no sense to deny these customers the benefits of fiber deployment which significantly enhances the broadband capabilities a carrier can deliver to consumers. This is precisely what the new rules were intended to cure. By basing the definition on the customer located within the

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[2] *Id.* ¶ 197 n.624 ("the conclusions we reach for high capacity loops in the

multiunit premises, rather than the building itself, the Commission would allow open competition for these customers, and still allow its enterprise rules to apply for true enterprise customers.

Likewise, given the realities of the LECs' network architectures, LECs cannot efficiently design and build a fiber network that extends to only certain buildings in particular areas. Various network requirements must be carefully designed in advance in order to deploy a network effectively. An efficient network cannot vary its design from building to building. Moreover, plans cannot be made if uncertainty and ambiguity exist about which buildings qualify for unbundling relief and which do not.

B. The Order also leaves open the possibility that the rules will only protect a subset of multiunit premises. Because of the Commission's definition of what constitutes fiber-to-the-premises, the Order could be construed to limit fiber-to-the-premises to multiunit premises where the wiring inside the building is not owned by the LEC. This could lead to the perverse situation where two identical buildings next door to each other could have different regulatory protection based on who owns the in-building wiring.

The Commission has not articulated any concern that would justify retaining the disparate treatment of multiunit premises. Resolving the current ambiguity would not interfere with access to in-building wiring. The *TRO* already assures that competing carriers may access in-building wiring owned by the incumbent carrier.[3] The Commission could retain that requirement, but recognize that fiber leading to the building is exempt from unbundling under a new fiber-to-the premises definition. This would

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enterprise market apply equally to mass market customers in multiunit premises").

[3] *Id.* ¶¶ 347-48.

encourage competing carriers to deploy their own fiber, and still allow them access to the wiring inside the building.

Unless these ambiguities with respect to multiunit premises are resolved, the new rules and the uncertainty they generate will irreversibly deter broadband deployment and investment.

2. The Commission Should Clarify The Definition of Fiber-to-the-Premises Loops.

The Commission's current rules for fiber-to-the-premises loops could be read to apply in their entirety only to mass market customers' premises. In the case of enterprise customers, on the other hand, the rules appear to impose an obligation to unbundle dark fiber. As an initial matter, imposing greater unbundling obligations in the case of enterprise customers seems incompatible with the Commission's stated objective of promoting deployment of fiber, and would result in greater unbundling obligations applying in the case of the very customers who have the widest range of options. For that reason, the Commission should modify its rules to provide relief for all fiber-to-the-premises loops regardless of the identity of the customer.

In the event the Commission does not so modify the rules, however, at a minimum it should clarify the definition of the mass market in this context, so LECs can know where to deploy new broadband services. It is critical that the Commission establish a uniform mass market definition for these particular purposes, rather than rely on the definition used in the switching context. The facilities implicated by these rules are very different from the switching facilities used for that definition; thus, the definitions in each context may and should be different from each other.

In the Errata to the *TRO*, the Commission appeared to recognize that the limits on unbundling full fiber loops should not just run to the residential "home", but should also include the business "premises."[4] In making that change, however, the Commission failed to define what premises are included in that definition.

Having a clear definition is important because these rules will be relied upon by carriers in making their broadband investment decisions. The Commission recognized that "removing incumbent LEC unbundling obligations on [fiber-to-the-premises] loops will promote their deployment of the network infrastructure necessary to provide broadband services to the mass market."[5] The Commission found that promotion is consistent with the Congressional mandate to the Commission under Section 706.[6]

Consistent with those conclusions, the Commission must define the mass market for this purpose in such a way that it will allow for reasonable deployment by carriers. In the real world, residences are mixed with small businesses (and often with larger businesses as well). The Commission will not achieve its goal of encouraging broadband deployment if the rules result in a swiss-cheese network configuration, allowing unbundling protections for some premises, but intermittently carving out holes in the protection depending on the premises tenant. Thus, in order to accomplish the Commission's goal, the mass market definition must include businesses likely to be mixed with residential premises.

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[4] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Errata, CC Docket No. 01-338, FCC 03-227, ¶ 38 (rel. Sept. 17, 2003).

[5] *TRO* ¶ 278.

[6] *TRO* ¶ 278.

The record before the Commission demonstrates that many small businesses are served by one or more DS1 loops. In fact, Verizon submitted an *ex parte* showing that CLECs used DS1 special access circuits to provide local service to small business customers throughout its territory, including such establishments as donut shops, car dealerships, schools, nursing homes, law firms, travel agencies, clothing retailers, churches and video rental shops.[7] These are exactly the type of small business that would most likely be mixed in with residential areas.

One way to clarify the definition in this context is to define the mass market as any residence or business customer locations which use up to 48 telephone numbers.[8] In order to craft a rule that would provide the incentives sought by the Commission, it should define the mass market to include customers with up to 48 telephone numbers – the equivalent of two DS1 loops.[9] Loop capacity cannot work as a measure for the mass market because it ignores the change that broadband technology will bring. With fiber-to-the-premises, the capacity of a DS1 or greater may be brought to individual homes. Any definition of mass market cannot exclude consumers as soon as they attempt to obtain the benefits of advanced deployment. While the use of telephone numbers has its

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[7] Letter from W. Scott Randolph, Director, Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, dated Jan. 10, 2003.

[8] At the same time, the Commission should follow through on the start made by the errata and change all references in the order from fiber-to-the-home, to fiber-to-the-premises.

[9] That evaluation must be made at the time of the fiber deployment. Any other rule would lead to the absurd result that a customer who remained in the same location, but purchased additional telecommunications services, would find that the regulation associated with even its existing service would change as a result. Not only would such a rule be impossible to administer, but it would also create new regulatory uncertainty, which is antithetical to the deployment incentives the Commission is trying to create.

flaws,[10] it will at least provide a bright line that recognizes that carriers will be deploying new technology to mixed-use communities.

3. Network Upgrades and Installation of Broadband Capability Are Not a Disruption or Degradation of TDM Capability.

In the *TRO*, the Commission explicitly declines to unbundle the "next generation, packetized capabilities" of hybrid loops, and requires unbundling only of the existing TDM features, functions, and capabilities of hybrid loops (where impairment has been found to exist).[11] However, the *TRO* also prohibits any ILEC practice, policy or procedure that would disrupt or degrade access to the TDM-based features, functions and capabilities of hybrid loops.[12] These rules are intended to promote broadband investment and to avoid "blunt[ing] the deployment of advanced telecommunications infrastructure by incumbent LECs."[13] To ensure that the new rules do in fact promote investment in broadband technologies, the Commission must clarify several aspects of these rules to eliminate internal inconsistencies and must make clear that adding packet switching capabilities to existing loops does not constitute a disruption or degradation of access to the TDM-based features, functions and capabilities of hybrid loops.

The new rules are clear that no unbundling is required for DS1 and DS3 loops where there is no TDM capability. Rule 51.319(a)(9) should make clear that there is no obligation to deploy TDM features, functions and capabilities where the incumbent LEC has not already done so, nor are ILECs required to reconfigure a copper or fiber

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[10] For example, even a small PBX will likely use enough numbers to push it past the 48-line limit.

[11] *TRO* ¶¶ 288-97.

[12] *TRO* ¶ 294.

[13] *TRO* ¶ 288.

packetized transmission facility to add TDM features, functions and capabilities. Finally, in order to promote the deployment of advanced technologies to all the customers that want them – which the Commission has recognized is "a central and critical component of ensuring [the] deployment of advanced telecommunications capabilities to all Americans"[14] – the Commission should clarify that the ILEC may add packet switching to serve an existing customer that did not previously use such technology and that the addition of such packet switching capability, even if it resulted in the loss of TDM capability, would not constitute a disruption or degradation of access to the TDM-based features, functions and capabilities of hybrid loops.

Finally, the Commission should clarify that the definition of "routine network modifications" in Rule 51.319(a)(8) does not require ILECs to remove or reconfigure packet switching equipment or equipment used to provision a packetized transmission path.

Conclusion

For good cause shown herein, SureWest respectfully submits that the Commission should partially reconsider and/or clarify its rules as described.

Respectfully submitted,

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14 *TRO* ¶ 243.